

Exhibit D

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA

4 v.

S1 12 Cr. 320 (ER)

5 SENTENCE

6 TORRELL M. SAXON,

7 Defendant.

8 -----x

9
10 United States Courthouse
11 White Plains, N.Y.
12 May 30, 2013
13 12:30 p.m.

14 Before:

15 THE HONORABLE EDGARDO RAMOS,

16 District Judge

17
18 APPEARANCES

19
20 PREET BHARARA

21 United States Attorney for the
22 Southern District of New York

23 MICHAEL GERBER

24 Assistant United States Attorney

25 AMY ATTIAS

Attorney for Defendant

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1 THE DEPUTY CLERK: United States of America v. Torrell
2 Saxon.

3 Counsel, please state your appearances for the record,
4 beginning with the government.

5 MR. GERBER: Michael Gerber for the United States.
6 Good afternoon, your Honor.

7 THE COURT: Mr. Gerber.

8 MS. ATTIAS: Good afternoon, Judge. Amy Attias for
9 Mr. Saxon.

10 THE COURT: Good afternoon, Ms. Attias.

11 And good afternoon to you, Mr. Saxon.

12 THE DEFENDANT: Good afternoon.

13 THE COURT: We are here today to impose sentence in
14 the case U.S. v. Torrell Saxon.

15 On April 17 and 23 of this year, we held a Fatigo
16 hearing in order to determine whether an enhancement pursuant
17 to 2D1.1(b) (1) of the Sentencing Guidelines was warranted due
18 to Mr. Saxon's use of a gun in connection with the underlying
19 narcotics distribution conviction, so let's deal with that
20 first.

21 At the hearing, the government presented numerous
22 exhibits as well as the testimony of Juan Moreira Adular, a
23 resident of 221 North Street in Middletown, the residence where
24 the incident occurred, and Gregory Klees, an ATF firearms and
25 toolmark examiner who testified as an expert witness in

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1 firearms and toolmark identification, in support of its
2 position that Saxon possessed a firearm on March 25, 2012.

3 In support of his position to the contrary, Saxon
4 testified and also presented the testimony of Brook Weinberg
5 Cameron, who testified as an expert in criminalistics,
6 Middletown Police Officer Achmed Artola, who responded to the
7 scene of the incident on March 25, and Middletown
8 Identification Officer Michael Brownstein, who conducted the
9 crime scene investigation. Saxon also presented various
10 exhibits, including two sworn statements made by Rodrigo
11 Perez-Suarez, another purported victim.

12 The government contends that, on the night of March
13 24, 2012, Saxon arrived at 221 North Street in possession of a
14 firearm and that Saxon fired the weapon three times while
15 inside the residence. Moreria testified that, upon entering
16 his apartment through the back door, which was located in the
17 kitchen, at approximately 11:30 p.m., he observed a
18 dark-skinned man, the defendant, pointing a gun at Perez' head.
19 The defendant and Perez were standing by the front door of the
20 apartment. Moreria began to walk from the kitchen towards the
21 front door, at which point the defendant fired the gun twice in
22 Moreria's direction. A struggle ensued between the defendant,
23 Rodrigo and Moreria, Rodrigo Perez and Moreria, during which
24 Moreria and Perez attempted to get the gun out of the
25 defendant's hands. At some point during the struggle, two

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1 other Hispanic men who were present in the apartment joined in.

2 During the struggle, the four Hispanic men pushed the
3 defendant against the door of the bedroom identified as bedroom
4 one. A shot was fired from the weapon which was positioned
5 against the door, and a bullet entered the door. The door of
6 bedroom one opened, and the men fell into the bedroom, at which
7 time the defendant released the gun, which fell onto a basket
8 that was on the floor of the bedroom. The Hispanic man then
9 proceeded to hold the defendant on the floor while they called
10 911 and waited for the police to arrive.

11 When the police arrived at the apartment, they
12 recovered a Walther P 22 caliber semi-automatic handgun and
13 three shell casings.

14 Moreria's testimony was corroborated by the testimony
15 of Klees and the forensic evidence presented by the government.
16 Moreria's testimony was further corroborated by the version of
17 events contained in two sworn statements that Perez provided to
18 law enforcement officers on March 22, 2012 and September 6,
19 2012, which were entered into evidence by the defendant. Both
20 statements placed the gun in the defendant's hands, and both
21 statements described the defendant firing the weapon. And
22 finally, the version of events recounted by Moreria and Perez
23 was further corroborated by the 911 call that was entered into
24 evidence by the government.

25 Saxon's version of events, in relevant part, and to

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1 the extent it differs from the government's version, is as
2 follows:

3 On the night of March 24, 2012, Saxon was brought to a
4 residence at 221 North Street in Middletown, New York by a
5 female acquaintance who told Saxon that he would be able to
6 sell prescription pills in his possession at that residence.
7 According to Saxon, when they arrived at 221 North Street, the
8 woman told him to wait on the porch outside while she went
9 inside to speak to someone. After speaking to someone inside
10 the apartment in Spanish for a few minutes, the woman told
11 Saxon to go inside.

12 Saxon claims that, upon entering the residence, Perez
13 grabbed the woman and pulled her out of the way while four or
14 five men began to attack Saxon. Saxon testified that the man
15 went into his pockets and removed his clothing in an effort to
16 rob him. During the ensuing struggle, Saxon observed the
17 firearm in the possession of Perez. According to Saxon, only
18 one shot was fired from the gun during the struggle. Saxon
19 testified that he did not have a gun on him on the night in
20 question and that he did not shoot a gun. Saxon only recalls
21 one shot in the residence -- one gun in the residence, and only
22 one gun was recovered by the police.

23 The only evidence in the record that supports Saxon's
24 version of events is the defendant's own testimony, and Saxon's
25 testimony was not consistent with the other evidence in the

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1 record. Further, Saxon testified that he drank a significant
2 amount of alcohol on the night in question and that he was
3 drunk at the time of the incident. Saxon also admitted that he
4 did not remember much of the night in question prior to
5 reviewing the discovery that was produced in this case.

6 By contrast, the government presented the credible
7 testimony of Moreria, which was corroborated by the expert
8 testimony of Klees and the forensic evidence introduced by the
9 government during the hearing. Additionally, the defendant's
10 expert witness agreed with all of Klees's conclusions regarding
11 the bullet strikes in the residence. Moreria's testimony,
12 which placed the gun in Saxon's hands and describes Saxon
13 firing the weapon, was further corroborated by the sworn
14 statements of Perez, which were offered into evidence, again,
15 by the defendant.

16 Therefore, the Court concludes that the government has
17 proven by a preponderance of the evidence that Saxon was in
18 possession of a firearm on the night in question and that he
19 discharged that firearm in the apartment at 221 North on the
20 night in question.

21 Accordingly, for purposes of sentencing, the
22 enhancement is appropriate, and the offense level will be
23 calculated accordingly.

24 That constitutes the decision of the Court with
25 respect to the Fatiko hearing.

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1 Now, with respect to sentencing, in preparation for
2 today's proceeding, I have reviewed the presentence report
3 dated May 22, 2013 prepared by U.S. Probation Officer Michael
4 Fisher, which includes the sentencing recommendation. I've
5 also reviewed the sentencing memorandum submitted by Ms. Attias
6 dated May 27, which includes a letter submitted on behalf of
7 Mr. Saxon by members of his family. And I've also reviewed the
8 letter submitted by Mr. Gerber dated May 29, 2013.

9 Is there anything else that I should have received or
10 reviewed?

11 MR. GERBER: No, your Honor.

12 MS. ATTIAS: Not from me, Judge.

13 THE COURT: Very well.

14 Ms. Attias, have you read the presentence report and
15 discussed it with your client?

16 MS. ATTIAS: Yes.

17 THE COURT: And Mr. Saxon, have you read the
18 presentence report?

19 THE DEFENDANT: Yes.

20 THE COURT: And apart from the issue concerning the
21 gun, are there any objections to the report regarding its
22 factual accuracy?

23 MS. ATTIAS: No.

24 THE COURT: Mr. Gerber?

25 MR. GERBER: No, your Honor.

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1 THE COURT: Although I am not required to impose a
2 sentence within the sentencing range calculated under the
3 guidelines, I am required to consider the guidelines in
4 imposing sentence. To do so, I need to determine the
5 applicable sentencing range.

6 I note that the sentencing range calculation in the
7 presentence report is the same as the guidelines range in the
8 government's plea agreement with Mr. Saxon. And I find that
9 the base offense level is 16 to which are added two levels for
10 use of a gun pursuant to Section 2D1.1(b) (1) of the U.S.
11 Sentencing Guidelines. However, because Mr. Saxon qualifies as
12 a career offender pursuant to Section 4B1.1 of the guidelines,
13 the total offense level -- or the base offense level is deemed
14 to be 32 from which are subtracted three levels for acceptance
15 of responsibility, yielding a total offense level of 29.

16 Mr. Saxon's criminal history category is V. However,
17 based on his designation as a career offender, the criminal
18 history category is automatically deemed to be VI.

19 Accordingly, I find that the total offense level is
20 29, the criminal history category is VI, and the sentencing
21 range is 151 to 188 months.

22 With respect to Count Two, because the statutory
23 maximum is five years, the effective total offense level for
24 Count Two is 60 months.

25 Does the government wish to be heard prior to

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1 sentencing?

2 MR. GERBER: Yes, your Honor.

3 The government believes that a sentence within the
4 guidelines range of 151 to 188 months is appropriate here.

5 And with the Court's permission, I'll first say a
6 little bit about the defendant's criminal history and the
7 conduct to which he pled guilty in this case and then turn for
8 a moment to the issue of the possession of the gun, the
9 discharge of the gun, that the Court just addressed.

10 This is a case, the government submits, in which there
11 is a need for deterrence, and there is a very, very powerful
12 need for deterrence, there was a prior three-year sentence
13 imposed on the defendant, there was a prior eight-year sentence
14 imposed on the defendant. And those sentences did not deter
15 the defendant from criminal activity.

16 As we discussed in our letter to the Court, the
17 defendant keeps on coming back to crime. And while defense
18 counsel makes the point that the career offender status has a
19 significant impact on the guidelines here, that is certainly
20 true, and defense counsel makes the point that the quantity of
21 drugs at issue here with respect to the instant offense is
22 relatively small as compared to other drug cases that this
23 Court sees, that's true, as well, but the whole point of the
24 career offender guidelines is to address a situation like this,
25 where the defendant has, time and again, committed serious

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1 criminal acts, whether it's a prior drug conviction or two
2 prior robbery convictions. Prior sentences, significant
3 sentences, just have not worked to deter the defendant from
4 turning to crime.

5 The defense also speaks about the personal challenges
6 that the defendant has faced, and that is, of course, relevant
7 under 3553(a), but what is also relevant is that the defendant
8 has engaged in crimes that have hurt people time and again.
9 Those robberies hurt people. The drug dealing hurts people.
10 Preys on addicts. It's making a buck off of addicts. And
11 while, yes, the Court can and should consider personal
12 challenges the defendant has faced, the government believes it
13 should also consider the harm that he has caused.

14 Let me just say a word about the gun and the shooting.

15 The defendant walked into 221 North Street, and he
16 shot at Juan Moreria. Mr. Moreria was minding his own
17 business. He was minding his own business, and the defendant
18 came in and shot him.

19 People shouldn't have to be afraid when they come into
20 their apartment at night that someone's going to shoot at them.
21 It's extremely serious. We believe it is appropriate to
22 consider under 3553(a) and under 18 U.S.C. 3661. And it is a
23 very powerful response to the argument that the defendant is a
24 changed person, that he's sort of past his prior criminal
25 conduct and he's on a different path. On the contrary. He has

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1 pled guilty to engaging in drug dealing, and then he went in
2 there with a gun and was shooting. And it speaks to the
3 defendant's dangerousness, and, again, it further speaks both
4 to the characteristics of the defendant, the defendant's
5 history and the importance, the need, for deterrence here.

6 So, for those reasons, the government respectfully
7 submits that a guidelines sentence is appropriate here.

8 THE COURT: Thank you, Mr. Gerber.

9 Ms. Attias, do you wish to be heard?

10 MS. ATTIAS: Yes, I do, Judge. Thank you.

11 Judge, in light of your decision on the Fatico
12 hearing, and, obviously, as I was preparing my letter, I knew
13 that you could decide either way, I want to make some
14 adjustments to what I suggested in my letter, but I don't go
15 much farther off from the request I made.

16 The computation of the guidelines without regard to
17 the career offender statute is, if you had found that he did
18 not have a gun by a preponderance of the evidence, he was
19 looking at 31 to 37 months. Now that you have found that he
20 did, to a preponderance of the evidence, have the gun on the
21 night of the incident, his guidelines, without going into the
22 career offender statute, would have been 37 to 46 months.

23 In my letter, I asked your Honor to give him a
24 sentence of 36 months, and that was looking at the guidelines
25 without the gun. So, now, taking the gun into consideration,

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1 his guidelines would still have been 37 to 46 months. You
2 found, after the hearing, that you believe that a two-point
3 enhancement applies, and I obviously completely respect that,
4 so I want to talk about how that should affect my request of
5 three years, 36 months.

6 Judge, at the top of the guidelines sentence, if
7 Mr. Saxon were not to be treated as a career offender, he would
8 be looking at 37 to 46 months. I believe that this Court could
9 fairly, and within the constraints of the parsimony clause of
10 3553(a) of United States Code, where the Court is instructed to
11 fashion a sentence that is sufficient, but not greater than
12 necessary, I believe that something at the top of the guideline
13 range of 37 to 46 months or perhaps even to go slightly above
14 that guideline range would bring us to a realistic range that
15 would punish Mr. Saxon for what he's done in this case, which
16 is the pill sales over the course of approximately two and a
17 half years.

18 So, to get into that, I need to just review his
19 background a little bit because I think that it is extremely
20 important when you are deciding whether or not you're going to
21 treat him as a career offender, which is discretionary. It's
22 not a mandatory status by any means. So I spent some time with
23 him talking about his prior offenses because I think that they
24 become critical in your Honor's decision about whether to give
25 him something in the guidelines without that statute or with

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1 it.

2 So his first conviction, at the age of 19, is an
3 undercover sale. He's arrested. He takes the plea. He gets
4 one to three. In my experience, that was, for Manhattan or the
5 Bronx, pretty high, but he gets one to three.

6 Shortly after that, he's arrested on the Bronx robbery
7 first. And I've spent some time with him asking how it was
8 that he ended up with the two concurrent robbery sentences.
9 Obviously, I cannot confirm this, but this is what I am
10 informed.

11 He's arrested in the Bronx for a knife-point subway
12 robbery. He's on the 6 train, and he commits a knife-point
13 robbery of a young man on the 6 train.

14 To go into that robbery for a moment, he had a child
15 when he was 17. He was in and out of a relationship with the
16 mother of that child, but he was constantly trying to provide
17 money to help support his child. And she's now, I think, 18.
18 So I am not excusing his conduct; I'm simply explaining it. In
19 my letter, I had already referred to the fact that his having a
20 child at 17 with a family who was not able to help financially
21 in any way was what put him on the street. He had left high
22 school, and he started doing low-level hand-to-hand street drug
23 sales.

24 They were desperate for money. He was told go out and
25 get me some money. I need to get this child some clothing,

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1 some food. And he took, basically, what was a kitchen knife,
2 went on the subway, saw a young man about his age on the 6
3 train who had actually just been counting some money, and
4 Mr. Saxon went up to that young man and did rob him at
5 knifepoint. No violence other than the fact that the act in
6 itself, of course, is inherently violent. No physical injury
7 happened. No one was hurt. And he was arrested immediately
8 thereafter.

9 When he was being arrested for that case, he was taken
10 off the 6 train in the Bronx. And police showed up
11 immediately. There was another man at the station who said
12 that looks like a guy who robbed me a few days ago. After that
13 happened, what sounds like to me, Judge, is eight robberies
14 were dropped on him; some in the Bronx, some in Manhattan. His
15 family then retained counsel and, ultimately, out of the
16 robbery charges that were put on him, he pled to one in the
17 Bronx and one in Manhattan.

18 I will tell you that he informs me that he did not do
19 the Manhattan robbery, he doesn't really know anything about
20 the Manhattan robbery, but, since he was looking at significant
21 time in the Bronx and he was looking at the possibility of
22 trying serial robbery cases, he and his attorney worked that
23 out. And in my experience, that is not something that is
24 unusual at all, particularly in the state, that a state
25 defendant has multiple charges, multiple indictments, and they

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1 work something out. And that is completely common experience
2 in my mind. So that has the ring of truth into it, that the
3 attorney was able to work out a plea where he took one in
4 Manhattan to cover everything and one in the Bronx to cover
5 everything there.

6 And again, I want to point out, as I did in my letter,
7 that the conduct for those two robberies that he pled to
8 occurred in 1999. That was 13 years before the conduct in this
9 case. He did his time. He got out in 2009. And since that
10 time, he basically reunited with the mother of his young child,
11 who he's known for many years through the family. He moved
12 back in with his family, but now they lived in Middletown as
13 opposed to the Bronx, and things were, by and large, better.

14 I am not going to stand here and make believe that
15 he's been an ideal citizen. We know from the charges that he
16 pled to and from the facts given to the government at the
17 innocence proffer that he was doing low-level pill sales to
18 supplement his income. And again, did he go back into crime?
19 Yes. But I'm going to be realistic here. In terms of going
20 back into crime, selling pills is one of the less offensive
21 ways to make a few extra dollars to supplement his income. I'm
22 not saying it's a good thing. Obviously, I would never go
23 there, Judge. But he didn't start acting violently. He didn't
24 start doing big sales. He had left the gang. And I don't know
25 if your Honor can see from there, but he had left the Bloods,

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1 and when he left the Bloods, his face was slashed on both
2 sides. And not only did he leave, he was completely out of it.

3 It still didn't put him in a position where he was
4 able to pay his bills. And you can see from the probation
5 report, the presentence report, that, whatever he made, the
6 most he made was something like 11, 12, 13 dollars an hour.
7 That doesn't go very far. It doesn't go very far at all when
8 you're paying for transportation and contributing to the
9 family. And then once his girlfriend became pregnant this
10 time, he needed to ensure that he could help with that
11 situation as well.

12 So should he be punished? Of course. But what he's
13 really, really looking at here is doing low-level pills sales.
14 And your Honor has found that he had the gun. I would think
15 that, in my opinion, 36 months for the pills sales themselves,
16 because of his record, was sufficient. Mr. Saxon, frankly,
17 asked me to ask your Honor for time served, and I didn't think
18 that was the proper thing to request, and so I didn't. I
19 thought that, with his record, having gotten out of jail on the
20 robberies and having gone back into selling -- and by the way,
21 they were his own prescription -- by and large from his own
22 prescription and then some from other sources, as well -- but,
23 having gotten back into that, that he needed to be punished
24 more than time served. And now that you have found that he was
25 in possession of a weapon that night, I would think that an

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1 appropriate sentence that would be sufficient, but not greater
2 than necessary, would be something in the range of 60 months or
3 so. That's five years. That would be the sentence that would
4 sentence him fairly for selling the pills, for getting back
5 into that drug world, but wouldn't go overboard, Judge, the way
6 that the career offender statute works here.

7 I do not disagree that there are those defendants that
8 need to be punished severely not only for what they've done,
9 but when there are people who won't stop doing real harm and
10 real violence and really bad things to people, I understand
11 where deterrence comes into the mix.

12 Mr. Saxon's past record, even though he's managed to
13 get himself convicted of four separate felonies, in my opinion,
14 again, none of them are terrible. They are, you know, a drug
15 sale when he's 19, knife-point robberies. They're not gunpoint
16 robberies. He goes back into low-level street, you know,
17 sell-to-who-you-know pill sales afterward.

18 This is not a dangerous man. Mr. Gerber said that
19 what he does hurts people, the selling pills hurts people.
20 Every crime hurts people. That's why we punish. That's why we
21 decide something's criminal, because there's not a crime that
22 happens that doesn't hurt people. Your task is to figure out
23 what it sufficient, but not greater than necessary.

24 And I would suggest that, in this case, on the facts
25 of this case, where, as I laid out in my letter, certainly his

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1 background came into it. His crack-addicted father came into
2 it. His mother, who struggled mightily to put food on the
3 table and is now doing very well and is able to, you know, be
4 more present for her family. She couldn't be home. It was
5 almost a prescription for him to hit the street, and that is,
6 in fact, what happened.

7 So when we're looking at his behavior that led to his
8 arrest and ultimate conviction by plea in this case, what is he
9 doing? He is supplementing his crummy income that he's making
10 from his crummy hourly rate at the legitimate jobs that he's
11 making. He's with a church-going woman. He is back in the
12 fold with his church-going family. He is not an angel. He's
13 never been an angel. I'm not suggesting that he was an angel.
14 But when we're looking at what is sufficient, but not greater
15 than necessary, I would suggest that five years, 60 months, is
16 the correct number to be looking at here.

17 And I just want to talk about what Mr. Gerber just
18 briefly addressed, what he said about Mr. Saxon coming into the
19 building and firing at Mr. Moreria, the witness that testified
20 here. So working from the point that we're assuming that he's
21 telling the truth, because that's what you found, it certainly
22 did not seem as if Mr. Saxon, who was extremely intoxicated,
23 was shooting at anything. It seemed rather more of a random
24 scattering of shots. And it does seem as if there were three
25 shots, but, Judge, I just want to recall that there's only two

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1 ballistics points, two ballistics markings, that are found in
2 the house. One is the kitchen mark that ricochets into the
3 back door. That's one shot. And the second is clearly during
4 the course of the struggle because that's the door that
5 everyone agrees that they're next to. Those are the only two
6 shots that we can really point to that actually happened.
7 Whether or not a third was fired, we know that there was a
8 shell, but it's sort of unclear about what happened with that,
9 and the experts really couldn't speak to it.

10 So I would say that, in response to Mr. Gerber saying
11 that Mr. Saxon came into the house and started firing at
12 Mr. Moreria, we know of two shots. One goes into the door
13 while they're all struggling. And the other one, I would
14 submit, Judge, that if somebody wanted to shoot down that hall
15 and actually be shooting at somebody, it wouldn't have been too
16 hard to hit somebody. It's a very small hallway. You saw all
17 the pictures. And if he really wanted to hit somebody who
18 testified that he was walking toward Mr. Saxon, he could have
19 almost point-blank fired into him. They were literally just a
20 few feet away.

21 So, again, working from the point of your decision
22 that he did have the gun that night, I would say that, in his
23 incredibly drunken condition, that, if that gun was fired, and
24 we know that it was fired, that that was a random shot down the
25 hallway and that they were able to get on top of him after

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1 that.

2 So I'm not saying to treat him as a first-timer. He's
3 not a first-timer. But when you look at where he's come from
4 and what he was doing, the real effort to be living a
5 legitimate working life, the bad decisions to do what he knows
6 how to do to supplement that working life by selling pills, I
7 would respectfully suggest that a sentence in the range of 60
8 months would be the proper sentence here.

9 THE COURT: Thank you, Ms. Attias.

10 Mr. Saxon, you have an absolute right to address me
11 before I impose sentence if you wish.

12 THE DEFENDANT: I don't know how to say the stuff
13 that's going on. I was told from the beginning that this gun
14 thing wasn't even going to be used.

15 MS. ATTIAS: Can I have a second, please, Judge. I'm
16 sorry.

17 (Counsel conferred with the defendant)

18 MS. ATTIAS: Thanks.

19 THE DEFENDANT: I just like to say that I know what I
20 was doing was wrong with the pills, but I did that because I
21 was trying to work. I had several jobs. I was doing the best
22 I could. I was under identity theft, and it took me three
23 years, almost the whole time I was out there, to clean that up.
24 I was working other jobs. I was working for two companies.
25 And I was making like 7.25 an hour. It was giving me four

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1 hours a week, like really low paid. I was just trying to do
2 everything I could. I was involved with a young lady. She has
3 my child right now. And she was helping me.

4 I'm just apologizing. I'm just --

5 MS. ATTIAS: Judge, I do just want to say one thing
6 about the identity theft that Mr. Saxon just referred to. It
7 was kind of striking because, during the probation interview,
8 we talked about this. He has almost never met his father in
9 his life, but when he got out of jail after his eight-year bit,
10 his natural father, who he was just sort of meeting, actually
11 did take his identity; opened lines of credit, did all kinds of
12 things. And he really messed up Torrell out there. It took
13 him ages to straighten that out.

14 THE COURT: What's his father's name?

15 MS. ATTIAS: Gregory Slatis.

16 This is mentioned in the report. But it was pretty
17 striking. He used his identity. I'm just looking for my own
18 notes of that interview.

19 It really -- again, not to excuse his going out there
20 and selling pills, but because he had taken his identity and
21 made a mess of it, it just made everything that much more
22 difficult when he came out. And I'm sure that you know from
23 your own past experience that a lot of times when people leave
24 their -- finish their incarceratory sentences, half the time,
25 they don't even have identity because it's gone during the

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1 course of the arrest and the sentence. And in this case, his
2 own natural father had actually made things that much more
3 difficult.

4 THE COURT: Very well. In deciding what sentence to
5 impose, in addition to the sentencing guidelines and the
6 commentaries thereto, I have considered all the factors set
7 forth in Section 3553(a), including the need for circumstances
8 of the offense and the history and characteristics of the
9 defendant, the need for the sentence imposed to reflect the
10 seriousness of the offense, to promote respect for the law, to
11 provide just punishment, to afford adequate deterrence and to
12 protect the public from future further crimes of the defendant.
13 In having considered those factors and all of the others that
14 are set forth in 3553(a), it is my intention to impose a
15 sentence of 120 months on Count One and 60 months on Count Two
16 to be served concurrently. Mr. Saxon will thereafter be on
17 supervised release for a period of three years on both Counts
18 One and Two concurrently and will be required to pay a \$100
19 special assessment on each count for a total of \$200. I will
20 not impose a fine as I find that Mr. Saxon is unable to pay a
21 fine.

22 I believe that this sentence is sufficient, but not
23 greater than necessary to comply with the purposes of
24 sentencing set forth in Section 3553(a) (2) for the following
25 reasons.

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1 First of all, Mr. Saxon, I have to tell you, despite
2 the arguments that your attorney made, I think that this is a
3 very serious case. I think that all cases concerning guns are
4 very serious. And I did find that you had a gun on the night
5 that you were arrested and that you fired the gun. And in
6 fact, we are very, very lucky, all of us, that the only thing
7 that was hurt were apparently some floors and some walls and a
8 door at that location. You fired a gun in a very confined
9 space, and how no one was hurt is, in fact, somewhat of a
10 miracle. So you are very, very lucky that you are only doing
11 ten years in this case and not spending the rest of your time
12 in jail.

13 I did read very carefully the presentence report and
14 the information concerning your background, and it is certainly
15 the case that, for someone like yourself, who had very little
16 by way of an economic opportunity, your father wasn't around,
17 that things were, no doubt, very difficult, and it is not the
18 least bit surprising that someone like yourself would turn to a
19 life of crime. However, your crimes were serious and they were
20 violent, and, for that reason, I think that, in your particular
21 case, the career offender enhancement is appropriate, which is
22 why I am not going to take Ms. Attias' recommendation and
23 sentence you as though you were not a career offender. And the
24 fact that, in this case, you very recklessly and, in an
25 intoxicated state, took a gun into a very serious situation I

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1 think enforces the observation that Mr. Gerber makes and that I
2 take very seriously that not only did you continue to go back
3 to committing crimes, but you went back to committing crimes
4 that put people at risk. However, because of the difficulties
5 that you encountered in your life and some of the reasons that
6 perhaps you committed some of these crimes, I think that some
7 benefit should be given to you.

8 By the way, I disagree completely with Ms. Attias' and
9 your telling me or attempting to justify this somehow by saying
10 that the jobs that you had paid relatively little. To the
11 extent that you had decent, honest work, you know, that's what
12 a lot of people make do with. That's what a lot of people live
13 on. That's what a lot of people raise their children on and
14 pay their rent. And they don't commit crimes and they don't
15 hurt people in the way that you were doing.

16 Notwithstanding that, however, I do think that ten
17 years in this case is sufficient, but not greater than
18 necessary to respond to the requirements of the sentencing
19 statutes.

20 Does counsel know of any legal reason, other than
21 what's already been argued, as to why the sentence should not
22 be imposed as stated?

23 MR. GERBER: No, your Honor.

24 MS. ATTIAS: No, Judge.

25 I do want to say that Mr. Saxon is asking to speak to

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1 you one more time before you finish here today.

2 THE COURT: Does he want to speak now?

3 THE DEFENDANT: Only I'm begging you. Please. Like I
4 apologize for what happened. I did not have no gun. I was the
5 one attacked. They told me that -- to cop out to the pills,
6 they wasn't gonna use the gun. I didn't have no gun. I was
7 attacked. I did not have no gun that night. I did not shoot
8 nobody. I did not shoot at nobody. I told them I'm innocent
9 from the beginning. From the time they arrested me, I told
10 them I had no gun. I did none of that. I made a mistake. I
11 went out there. I had pills. I had a call. I went out there.
12 And I was drunk. And when I went out there, my intention was
13 just to get a few dollars. My girlfriend gave me \$20, and it
14 wasn't enough to last me until I see her again.

15 I was trying to get more jobs. They kept telling me
16 that we don't have no work right now, so I went out there to
17 get a few dollars. But I had no gun. I didn't shoot nobody.
18 All the crimes, everything, I admit to. I took the weight for
19 it. I didn't have no gun. I had no gun. I didn't shoot
20 nobody. They attack me from the time I went inside the house.
21 They grab me. They grab me and they push me up against this
22 thing.

23 I didn't have no gun at all. I didn't have no gun. I
24 didn't possess no gun. I was in Yonkers the whole time. When
25 I came back up to Middletown, I got a call. I did not have no

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1 gun at all. I did not leave that house -- no guns. No guns in
2 my aunt's house. My aunt works. The kids go to school.
3 Nobody has no guns, no nothing, in that house. I didn't have
4 no gun. I didn't leave from church with no gun to come back up
5 to Yonkers. I didn't have no gun at all that night. I made a
6 mistake and picked the wrong thing to pick up some pills to get
7 some extra money. Like I'm sorry. I apologize. But I'm
8 asking you for mercy. Ten years. I just did ten years. I'm
9 asking you please to have mercy and please can you just give me
10 like a little less time. I apologize to the Court. Everybody.

11 I did not have no gun. And it's not fair because they
12 sat there and told me and waited 'till I sat there and gave
13 them information about pills, and then they switched the whole
14 thing and said, oh, we're going to give you a two-point
15 enhancement, we're going to mention this at sentencing. I
16 wouldn't have -- I wouldn't have even had said nothing about
17 anything if I could -- my whole intention was to go to trial.
18 From the time I got arrested, I said I got robbed. I didn't
19 have no gun. I told them at a Fatico. I tell them at a
20 innocent proffer. I told her when she asked me to snitch on
21 these people and tell them the whole -- I'm like, no, I'm not
22 telling on nobody. I'm going to trial. I didn't have no gun.

23 Right before trial, they come with this offer of
24 (B) (1) (b). I didn't even know what a (b) (1) (B) was. But being
25 that I heard everybody talking about a (b) (1) (C), I said, nah,

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1 I'll take a (b) (1) (C) 'cause I knew that's something lower.
2 She said it's not going to happen. Next thing you know, they
3 saying, yo, we'll drop the gun if you cop out to these pills.
4 I'm, all right, fine. Then they said they gonna throw in the
5 gun. They say they not gonna do a whole bunch of stuff, and
6 they did it anyway. They told me that, yo, listen, you cop out
7 to this and see what happen. They went and talked to somebody
8 and said, oh, yeah, we're going to accept it, but we're going
9 to give you a two-point enhancement. The whole beginning, you
10 said you wasn't gonna use the gun against me, period. I simply
11 ask her are they going to use the -- are they gonna try
12 something different or they gonna wait 'till I give them
13 information to try to use it against me? She said no, that's
14 not how things work. They turn around and did it. They both
15 said, oh, we didn't know they was gonna do that.

16 I wouldn't have copped out. I wouldn't have said -- I
17 wouldn't -- I would've just went to trial. Don't make no
18 sense. I did not have a gun. I went for the pills. I'm sorry
19 about that. I'm asking you to please have mercy. I just did
20 ten years. I'm trying to get my life back together.

21 THE COURT: Well, Mr. Saxon -- I don't know, Ms.
22 Attias, whether you have an application you wish to make based
23 on what's just been said.

24 MS. ATTIAS: No, Judge.

25 There was a point, if you will remember, a few months

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1 ago when we were in here, Mr. Saxon had considered asking to
2 withdraw his guilty plea. I met with him in the jail. I spoke
3 to Mr. Gerber. We actually came into court and, on that day, I
4 met with him downstairs and spoke to him again, and he told me
5 that he had changed his mind, he did not wish to withdraw his
6 plea. And I just want to say that part of that was because he
7 was looking at a 15-year mandatory minimum, which was -- he
8 always knew that you could go all the way up through the top of
9 the guidelines, and he knew that I was going to be asking for
10 the range that I asked for, and he knew that the trial could go
11 either way. We could have won. We could have lost. And with
12 your Honor's decision on the hearing, frankly, it gives me an
13 indication of what a jury might have thought. And he knew that
14 he was going to be looking at a 15-year minimum. I am not
15 hearing any basis -- he is not saying anything that gives me
16 the feeling that I can truly ask you, based on any legal
17 grounds, for his plea back, so I am not making that motion.

18 THE COURT: Very well.

19 Mr. Gerber.

20 MR. GERBER: Your Honor, I just want to make clear on
21 the record the defendant signed a plea agreement. That plea
22 agreement expressly states that -- there's a paragraph -- let
23 me just -- if I may have one moment, your Honor, just to pull
24 that out.

25 In the plea agreement that the defendant signed, on

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1 page 3, paragraph 8, it expressly states that the parties
2 disagree as to whether the defendant possessed a firearm on the
3 night in question and that there is a dispute regarding whether
4 the two-point level increase is appropriate. Each party
5 reserves the right to argue that he did or did not possess the
6 firearm. That was expressly in the plea agreement.

7 There was, frankly, extensive discussion with the
8 defendant and the defendant's counsel regarding this provision.
9 The defendant and defense counsel were quite aware of this
10 provision. And I would also point out that this provision
11 addresses a two-level increase at issue here. That actually
12 doesn't affect the guidelines calculation in this case at all.

13 Even if -- even if -- that provision had not been in
14 the plea agreement, which it was, but even if it had not been,
15 under 3553(a), this Court is permitted to consider anything
16 regarding the defendant's history and characteristics. There
17 is language in our plea agreements, standard language, that
18 says that, within the stipulated guidelines range, the parties
19 are allowed to make arguments, bring to the Court's attention
20 anything that bears on where the Court should sentence within
21 that guidelines range.

22 For the defendant to say now, after having signed this
23 agreement, discussing it with the government, discussing it
24 with defense counsel and, moreover, when the defendant,
25 apparently, at one point was considering trying to -- asking to

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1 withdraw his plea agreement and then, I believe on the record,
2 there was a record from defense counsel that he had
3 affirmatively decided he did not want to withdraw his plea, for
4 the defendant to say now that -- I take it that he's -- in
5 fact, he's not happy with the plea agreement that he entered
6 into, that he really wants to go to trial, you know, obviously,
7 he's saying that because of the sentence that was imposed, and
8 that is not a ground for a defendant to withdraw his plea.

9 THE COURT: Thank you.

10 And again, I don't involve myself in plea
11 negotiations, and I really wasn't asking for a recitation of
12 those negotiations from the parties. I just really wanted to
13 know whether there were any applications that would be made in
14 light of Mr. Saxon's comments.

15 And Mr. Saxon, the only thing that I will tell you in
16 addition to what I indicated in my decision on the Fatico is I
17 don't know what else you would have wanted to put in, if
18 anything. I mean, I thought that you put in all the
19 information, all the evidence that you had. I saw videotape.
20 I listened to your testimony.

21 And quite frankly, your theory of -- or the theory
22 that was presented to me about what happened in the apartment
23 that night on the part of the defense was inherently
24 preposterous. It just seemed incredible to me that those
25 individuals who robbed you would then turn around, having taken

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1 the gun from you, having overpowered you and called 911 and
2 invited the police to come into the apartment the way that they
3 did knowing, first of all, that they had just robbed you and,
4 more importantly and more pertinent to my mind that each of
5 them, so far as I've been told, was an illegal immigrant and
6 subject to be deported from the country. So the theory that
7 was presented, to my mind, was absolutely implausible. I don't
8 know what a jury would have done, but I'm telling you that I
9 believe that you received a full hearing on whether or not
10 there was a gun in that apartment, who had the gun in the
11 apartment, who fired the gun.

12 And with that, it is the judgment of this Court that
13 you be committed to the custody of the Bureau of Prisons for
14 120 months on Count One and 60 months on Count Two to be served
15 concurrently. That will be followed by three years of
16 supervised release on both Counts One and Two to run
17 concurrently. And you will be required to pay a \$100 special
18 assessment on each count of conviction for a total of \$200.

19 I will not impose a fine. I find that Mr. Saxon is
20 unable to pay a fine.

21 Is there a forfeiture order in this case?

22 MR. GERBER: No, your Honor.

23 THE COURT: I will also impose the standard conditions
24 of supervised release numbers 1 through 13 and the mandatory
25 and special conditions that are detailed in the presentence

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1 report.

2 Are there any open counts?

3 MR. GERBER: Yes, your Honor. The sole count of the
4 initial indictment, which the government would ask that the
5 Court dismiss.

6 THE COURT: Very well. That application is granted.

7 Also, I will not impose any restitution as I find that
8 restitution is not applicable in this case.

9 That constitutes the sentence of the Court.

10 Mr. Saxon, I believe that you've waived your right to
11 appeal a sentence at or below the stipulated range. Your
12 sentence is below the stipulated range. However, you may have
13 some limited basis to appeal. And there are very strict time
14 limits by which you must file your notice of intent to appeal.

15 Ms. Attias, will you assure me that you will promptly
16 and thoroughly discuss with Mr. Saxon such appellate right as
17 he might yet have and that you will do so promptly?

18 MS. ATTIAS: Yes, I will, Judge.

19 And there's just one other thing. I would ask you to
20 consider recommending the Bureau of Prisons designate Mr. Saxon
21 as close to home as possible because he has a child that is
22 just a few months old and maybe, this way, they can establish
23 some relationship as she gets older.

24 THE COURT: I will make that recommendation.

25 MS. ATTIAS: Thank you.

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1 THE COURT: Are there any other applications?

2 MR. GERBER: No, your Honor.

3 MS. ATTIAS: No, Judge.

4 THE COURT: We're adjourned.

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